

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/898,616	PILON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Christina Borgeest	1649	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Applicants amendment 5 June 2006 and telephone interview with Mr. Barry Evans on 7/10/06.

2. ☒ The allowed claim(s) is/are 35,37-41,43-49,51,53 and 54.

3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some\* c) ☐ None of the:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.

(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached

1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.

(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)

2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_

4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material

5. ☐ Notice of Informal Patent Application (PTO-152)

6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 10 July 2006.

7. ☒ Examiner's Amendment/Comment

8. ☒ Examiner's Statement of Reasons for Allowance

9. ☐ Other \_\_\_\_\_.

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to Applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee. Authorization for this examiner's amendment was given in a telephone interview with Mr. Henry Cittone on 19 July 2006.

An extension of time under 37 CFR 1.136(a) is required in order to make an examiner's amendment which places this application in condition for allowance. During a telephone conversation conducted on 18 July 2006, Mr. Henry Cittone ***indicated that they had paid an extension of time for 2 MONTH(S)*** and had authorized the Director to charge Deposit Account No. 50-0540 the required fee for this extension. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Cancellation of claim 50.

The following is an examiner's statement of reasons for allowance: In an Examiner interview 14 February 2006, it was agreed between the previous examiner, her supervisory patent examiner and the Applicants' attorney that the rejection of claim 49 under 103(a) had been withdrawn and remained withdrawn. The rejection of claim

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36 under 35 U.S.C. 112, second paragraph was obviated by Applicants' cancellation of claim 36. The rejection of claims 35-55 and 74-78 under 35 U.S.C. 101 for statutory double patenting over claims 35-41, 48-61 and 80-84 of copending Application 10/187,498 was obviated by Applicants' cancellation of claims 35-41, 48-61 and 80-84 in the copending application. The rejection of claims 42 and 52 under 35 U.S.C. 112, first paragraph for introducing new matter was obviated by Applicants' cancellation of those claims. The rejection of claims 101-103 for non-statutory obviousness-type double patenting as being unpatentable over claims 85-122 of copending Application No. 10/187,498 was obviated by Applicants' cancellation of claims 101-103. The rejection of claim 55 under U.S.C. 103(a) as unpatentable over Andersson et al. in view of Palmer et al (US Patent 4,691,009) and Shin was obviated by Applicants' cancellation of claim 55. The advisory action dated 28 June 2006 stated that claim 50 recites "a polypeptide comprising the amino acid sequence of SEQ ID NO: 11" and while the original sequence listing provided a SEQ ID NO: 11, the last and official paper sequence listing that was submitted on 15 October 2002 failed to list a SEQ ID NO: 11 (there were only 10 sequences), thus a further search could not be conducted and the amendment to claim 50 could not be entered. In a telephone conversation with Mr. Henry Cittone (Applicants' Attorney) on 10 July 2006, the Attorney stated that the SEQ ID NO: 11 was disclosed in the specification and that the Applicant was willing to cancel claim 50, thus obviating any remaining barriers to entering the amendment. Mr. Cittone also expressed a willingness to submit a corrected sequence listing with an indication of where in the original specification support could be found.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

Claims 35, 37-41, 43-49, 51, 53 and 54 are allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christina Borgeest whose telephone number is 571-272-4482. The examiner can normally be reached on 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Andres can be reached on 571-272-0867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christina Borgeest, Ph.D.

*Elizabeth C. Kemmerer*

ELIZABETH KEMMERER  
PRIMARY EXAMINER